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The Supreme Court in the American Constitutional System: Foreword

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The Supreme Court in the American Constitutional System

FOREWORD

*Joseph O'Meara**

Criticism is helpful to the Supreme Court, as to other human institutions. The Justices themselves long have recognized this fact. No one, so far as I know, has made the point more effectively than Justice Brewer, speaking in 1898:

It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism. On the contrary, the life and character of its justices should be the objects of constant watchfulness by all, and its judgments subject to the freest criticism. . . . True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all.¹

The attacks upon the Supreme Court in the last years have nevertheless resulted in a serious situation. The situation is serious not because of the attacks, but because the attackers have had the field pretty much to themselves. Our distinguished Chairman and his successor as president of the American Bar Association have spoken out forthrightly, as have others; but I think it will have to be admitted that the Court's defenders have been comparatively few. Its critics, on the other hand, have been numerous; and for the most part their attacks have been so clamorous and incessant that they have gained wide, and sometimes uncritical acceptance.

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¹ Brewer, *Government by Injunction*, 15 NAT'L CORP. REP. 848, 849 (1898).

It is this situation which has called forth our Symposium. Its purpose is to examine the function of the Supreme Court and the conditions under which it necessarily operates, and in this way, we hope, to illuminate some of the far-reaching questions which are involved.

It is fitting that the Notre Dame Law School should undertake to accomplish this purpose. The Canons of Professional Ethics make it plain that:

It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor.²

There is no duty, however, to defend a court's *decisions*. I have no doubt that the members of our panel are in disagreement among themselves concerning some of the decisions on which critics of the Supreme Court base their assaults upon it. It is no part of our program to debate the merits or demerits of these decisions. Our concern is for the Supreme Court as an institution—for the Court as the ultimate guardian under the Constitution of the rights and liberties which have made America the promised land, for the Court as the chief spokesman for the Rule of Law in an increasingly lawless world.

This approach is in line with the thinking of the distinguished lawyer who will preside today. He is devoted to the Supreme Court as an institution without which our republican form of government could not survive. I am proud to present him to you, Mr. David F. Maxwell, immediate past president of the American Bar Association.

² THE CANONS OF PROFESSIONAL ETHICS OF THE AMERICAN BAR ASSOCIATION 1 (1908), reprinted in THE CANONS OF PROFESSIONAL ETHICS ANNOTATED (1957).